

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

MCELROY HOLLOWELL

PLAINTIFF

V.

CIVIL ACTION NO. 4:10-cv-00204-CWR-FKB

TOWN OF STONE WALL, ET AL.

DEFENDANTS

REPORT AND RECOMMENDATION

This matter is before the Court *sua sponte*. On August 12, 2011, Defendants filed a Suggestion of Death as to the Plaintiff, McElroy Hollowell. See Docket No. 15. On August 30, 2011, the Court entered an Order removing the case from the active docket of the Court and noting that a proper party should file a Motion to Substitute pursuant to Rule 25 of the Federal Rules of Civil Procedure for this matter to continue. See Docket No. 16. Under Rule 25, unless a motion to substitute is made “within 90 days after the service of a statement noting the death [of a party], the action by or against the decedent must be dismissed.” Because the Suggestion of Death was filed on August 12, 2011, the ninety day period for filing a motion to substitute parties expired on or about November 10, 2011. No motion to substitute has been filed in this action.

Accordingly, the undersigned recommends that this case be dismissed. The parties are hereby notified that failure to file written objections to the proposed findings, conclusions, and recommendation contained within this report and recommendation within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. 28 U.S.C. §636, Douglass v. United Services Automobile Association, 79 F.3d 1415, 1428-29 (5th Cir. 1996).

RESPECTFULLY SUBMITTED, this the 5th day of December, 2011.

s/ F. Keith Ball
UNITED STATES MAGISTRATE JUDGE